IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 1ST FEBRUARY 2007 / 12TH MAGHA 1928

WP(C).No. 8790 of 2005(U)

PETITIONER:

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1. M/S. GAYA PHARMACEUTICALS,
   REPRESENTED BY ITS MANAGING PARTNER,
   MANOJ BAKER FENN, THADATHIL BUILDINGS,
   NEAR DHARSANA AUDITORIUM, SHASTRI ROAD,KOTTAYAM.

2. MR.MANOJ BAKER FENN,
   MANAGING PARTNER, THADATHIL BUILDINGS,
   NEAR DHARSANA AUDITORIUM, SHASTRI ROAD, KOTTAYAM.

BY ADV. SRI.M.P.MADHAVANKUTTY

RESPONDENTS:

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1. LYKA EXPORTS LTD.,
   REPRESENTED BY MR.PRAMOD MANE,
   SECRETARIAL EXECUTIVE, 77 NEHRU ROAD,
   VILLE PARLE (EAST), MUMBAI-400 099.

2. STATE OF MAHARASHTRA,
   REPRESENTED BY HOME SECRETARY, MUMBAI-400 099,
   MAHARASHTRA.

3. STATE OF KERALA,
   REPRESENTED BY HOME SECRETARY,
   GOVERNMENT SECRETARIAT, TRIVANDRUM.

BY GOVERNMENT PLEADER SRI.GIKKU JACOB

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 01/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WPC NO.8790 OF 2005

PETITIONER'S EXHIBITS:

EXT.P1:- TRUE COPY OF THE REPLY NOTICE SENT TO THE FIRST RESPONDENT BY THE PETITIONERS.

EXT.P2:- TRUE COPY OF THE COMPLAINT FILED BY THE FIRST RESPONDENT.

[TRUE COPY]

R.BASANT, J

W.P.C.No.8790 of 2005

Dated this the 1st day of February 2007

JUDGMENT

The petitioners are the accused in a prosecution under Section 138 of the Negotiable Instruments Act and that prosecution is pending before the Metropolitan Magistrate Court-12, Bandra, Mumbai, Maharashtra. Cognizance has been taken by the learned Magistrate. Processes have been issued against the petitioners.

2. That court functions within the jurisdiction of the High Court of Maharashtra. The petitioners have come to this court with the prayer that the proceedings initiated against him before that court may be quashed invoking the powers under Article 226 of the Constitution.

3. What is the ground? The short contention raised is that prosecution in respect of four cheques cannot be the subject matter of one prosecution as the same violates the mandate of Section 219 Cr.P.C. This, in short, is the contention raised.

4. That alleged irregularity committed by a court in Mumbai cannot, obviously, confer jurisdiction of this court to

invoke the powers under Article 226 of the Constitution. There is no dispute that powers under Section 227 of the Constitution or Section 482 Cr.P.C cannot be invoked but the learned counsel contends that in as much as the petitioners have come before this court by calling his petition as one under Article 226 of the Constitution, such jurisdiction would be available.

5. I am unable to agree. At the first instance, I must note that though the petition has come with the label 'petition under Article 226 of the Constitution', it is virtually and truly a petition under Article 227 of the Constitution/Section 482 Cr.P.C. Cognizance has already been taken by the learned Magistrate. In these circumstances, the decision in Musaraf Hussain v. Bhageeratha Engg.Ltd. [2006(2)KLT 525 SC] becomes relevant. Powers under Article 227 and Section 482 Cr.P.C are not available to this court. Merely because the petitioners have chosen to seek the relief under Article 226 of the Constitution, this court cannot assume jurisdiction.

6. Moreover, even if that court were within the territorial jurisdiction of this court, I find no reason whatsoever to invoke the powers under Article 226, 227 or Section 482 Cr.P.C.

7. At worst if the objections were found to be sustainable, the court will have to register two separate cases to satisfy the objection raised. Merely because such an alleged irregularity has been committed by the court, I find no reason to invoke the powers under any of the above three provisions.

8. There cannot possibly be a contention that the court at Maharashtra has no territorial jurisdiction to entertain the complaint. The decision in K.Bhaskaran v. Sankaran Vaidhyan Balan [2006(1) KLT 552] makes the position crystal clear. The courts within the jurisdiction of which any of the five events which, according to the above decision constitute a punishable offence, occur can entertain territorial jurisdiction. The contention that the courts at Maharashtra do not have jurisdiction cannot also, in these circumstances, succeed.

9. In the result, this writ petition is dismissed.

(R.BASANT, JUDGE)

jsr

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006